

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROSEMERE NEIGHBORHOOD
ASSOCIATION, a Washington non-profit
corporation,,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, an agency of the
United States Department of Interior; and
STEPHEN L. JOHNSON, in his official
capacity as Administrator of the Environmental
Protection Agency,

Defendant.

Case No. C05-5443FDB

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

This matter comes before the court on the motion of Defendants United States Environmental Protection Agency and Stephen L. Johnson, Administrator of the Environmental Protection Agency (collectively EPA), to dismiss this action for lack of subject matter jurisdiction. Having reviewed the motion, the response of Plaintiff Rosemere Neighborhood Association (Rosemere), and the balance of the record, the court finds that the motion should be granted.

I.

In this action, Rosemere asks the court to compel EPA to take action on an administrative complaint Rosemere filed against the City of Vancouver. Rosemere requests that the court order EPA to review the complaint and decide whether to accept, reject, or refer it to another federal agency pursuant to 40 C.F.R. § 7.120. EPA has since decided to accept the Rosemere administrative

1 complaint for designation. Accordingly, EPA moves to dismiss the lawsuit as moot and for lack of
2 subject matter jurisdiction. Rosemere argues that a live controversy still remains because it also
3 seeks a declaratory judgment regarding the legality of EPA's delay in responding to Rosemere's
4 complaint. Rosemere also argues that this case is an exception to the mootness doctrine because the
5 challenged conduct here is capable of repetition.

6 II.

7 EPA regulations, codified at 40 C.F.R. Part 7, provides that persons believing that they have
8 suffered discrimination in a covered activity may file a complaint with EPA. 40 C.F.R. § 7.120(a).
9 When a complaint is filed, EPA is required to acknowledge receipt of the complaint and then
10 immediately initiate complaint processing procedures. 40 C.F.R. § 7.120 (c), (d). The regulations
11 further contemplate that, within 20 calendar days of acknowledgment or receipt, EPA's Office of
12 Civil Rights will "review the complaint for acceptance, rejection, or referral to the appropriate
13 Federal agency." 40 C.F.R. § 7.120(d)(1)(j). If the complaint is accepted, notice of that fact is to be
14 given to, *inter alia*, the complainant. 40 C.F.R. § 7.120(e)(1)(ii).

15 On or about December 13, 2003, Rosemere filed an administrative complaint with EPA
16 pursuant to 40 C.F.R. § 7.120(a) alleging that the City of Vancouver was retaliating against it for
17 filing a prior administrative complaint under Title VI.¹ Receipt was acknowledged by EPA on
18 January 12, 2004. It is undisputed that EPA did not then take timely action on Rosemere's
19 administrative complaint.

20 Rosemere filed the instant action on July 1, 2005, seeking a declaration that EPA was acting
21 unlawfully in having failed to accept, reject or refer its administrative complaint. Rosemere also
22 seeks a mandatory order compelling EPA to act. OCR received a copy of Rosemere's lawsuit on or
23 about July 26, 2005. Prior to that time, on June 9, 2005, OCR had reached the conclusion that the

24
25 ¹The prior administrative complaint is not part of the present lawsuit.

1 Rosemere administrative complaint satisfied the jurisdiction criteria and a draft letter was prepared
2 accepting the complaint for investigation. Letters notifying Rosemere and the City of Vancouver of
3 OCR's decision to accept the complaint were sent on August 16, 2005.

4 III.

5 **A. Rosemere's Request for Declaratory Relief is Moot**

6 The case or controversy requirement of Article III demand dismissal when the issues
7 presented are no longer "live" or the parties lack a cognizable interest in the outcome. *Murphy v.*
8 *Hunt*, 455 U.S. 478, 481 (1982). A case becomes moot when it "loses its character as a present, live
9 controversy of the kind that must exist" in order to avoid "advisory opinions on abstract questions of
10 law." *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001).

11 By its complaint, Rosemere seeks an order compelling EPA action unlawfully withheld or
12 unreasonably delayed. That action is an OCR decision to accept, reject, or refer its administrative
13 complaint, an action that OCR took on August 16, 2005. Rosemere's case is, therefore, moot. This
14 court cannot now grant Rosemere's request for relief in the form of a declaratory judgment that EPA
15 acted wrongfully. *See, United Public Workers of America v. Mitchell*, 330 U.S. 75, 89, 67 S.Ct.
16 556, 564 (1947) (federal court cannot issue declaratory judgment if claim has become moot); *Public*
17 *Utilities Comm'n of the State of California v. Federal Energy Regulatory Comm'n*, 100 F.3d 1451,
18 1459 (1996) (citing *Noatak v. Blatchford*, 38 F.3d 1505, 1514 (9th Cir. 1994)).

19 **B. No Exception to the Mootness Doctrine Applies**

20 Rosemere also urges that its case is not moot because it falls within the "capable of repetition
21 while evading review," exception to the mootness doctrine. However, this exception applies only in
22 "exceptional circumstances." *GTE California, Inc. v. F.C.C.*, 39 F.3d 940, 945 (9th Cir. 1994) and
23 provides only "minimal protection to individual plaintiffs." *Doe v. Attorney General of U.S.*, 941
24 F.2d 780, 784 (9th Cir. 1991). In order to fit the exception, a controversy must meet two
25 requirements: (1) the challenged action was in its duration too short to be fully litigated prior to its

1 cessation or expiration, and (2) there was a reasonable expectation that the same complaining party
2 would be subjected to the same action again. *Murphy v. Hunt*, 455 U.S. 478, 482 102 S.Ct. 1181,
3 1183 (1982).


4 In order to take advantage of this exception, Rosemere must demonstrate that there is a
5 “reasonable expectation” that it “would be subjected to the same action again.” *Headwaters, Inc. v.*
6 *Bureau of Land Management, Medford Dist.*, 893 F.2d 1012, 1016 (9th Cir. 1990). Rosemere has
7 not shown that this incident was anything more than an isolated instance of untimeliness and
8 oversight. Rosemere’s reliance on the principle that “a defendant’s voluntary cessation of a
9 challenged practice does not deprive a federal court of its power to determine the legality of the
10 practice,” provides it no help. *See, Friends of the Earth, Inc. v. Laidlaw Environmental Services*,
11 528 U.S. 167, 189 (2000). There is no evidence that EPA’s failure to act timely on Rosemere’s
12 complaint constitutes a “practice” which EPA could resume once the action was dismissed on
13 grounds of mootness. In essence, Rosemere has received all the relief to which it is entitled and now
14 seeks an advisory opinion of EPA’s inaction. This, the court cannot do.

15 ACCORDINGLY,

16 IT IS ORDERED:

- 17 (1) Defendant’s motion to dismiss (Dkt.# 11) is **GRANTED**; and
18 (2) This case is dismissed for lack of subject matter jurisdiction.

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20 DATED this 7th day of December, 2005.

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22 
23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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